

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JUAN RODRIGUEZ,

Petitioner,

vs.

STATE OF MONTANA, MONTANA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, JOHN DOE and
JANE DOE (DPHHS EMPLOYEES),

Defendant.

CV 17-104-H-BMM-JTJ

ORDER

United States Magistrate Judge John Johnston entered Findings and Recommendations (Doc. 14) in this case on May 31, 2018, recommending dismissal of Plaintiff Juan Rodriguez’s Complaint. (Doc. 2.) Rodriguez timely filed an objection on June 18, 2018. (Doc. 22.) Consequently, Rodriguez is entitled to de novo review of those findings and recommendations to which he has specifically objected. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a

mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). “A party makes a proper objection by identifying the parts of the magistrate’s disposition that the party finds objectionable and presenting legal argument and supporting authority, such that the district court is able to identify the issues and the reasons supporting a contrary result.” *Montana Shooting Sports Ass’n v. Holder*, 2010 WL 4102940, at *2 (D. Mont. Oct. 18, 2010) (citation omitted).

Rodriguez is a prisoner proceeding in forma pauperis so Judge Johnston reviewed his Complaint under 28 U.S.C. § 1915. Section 1915(e)(2)(B) allows for the dismissal of a pro se prisoner complaint before it is served upon the defendants if it is frivolous, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. A complaint is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A complaint fails to state a claim upon which relief may be granted if a plaintiff fails to allege the “grounds” of his “entitlement to relief.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Further, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Judge Johnston screened Rodriguez’s Complaint and determined that

that Rodriguez's claims were frivolous and lack arguable substance in law or fact. (Doc. 14 at 12.) Judge Johnston's Findings and Recommendations were issued on May 31, 2018. Rodriguez filed a motion to amend his complaint on the same day. (Doc. 17.) Rodriguez timely filed an objection to Judge Johnston's Findings and Recommendations. *Id.* Rodriguez's objection asks the Court for leave to amend his Complaint to correct the deficiencies identified in the Findings and Recommendations. *Id.*

Rodriguez's objection is improper because it fails to present legal argument and supporting authority. Rodriguez failed to object properly to any of Judge Johnston's Findings and Recommendations. This Court reviews therefore the record for clear error. L.R. 72.3(a); *see also McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations. Judge Johnston recommended dismissal under Section 1915(e). Accordingly, Rodriguez may re-file a new complaint that contains arguable substance in law or fact.

ACCORDINGLY, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 14) are ADOPTED IN FULL. Rodriguez's Complaint (Doc. 2) is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter a judgment of dismissal.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 28th day of November, 2018.

A handwritten signature in blue ink, reading "Brian Morris", is positioned above a horizontal line.

Brian Morris
United States District Court Judge